

**United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 741 and The Ashton Company, Inc. and Laborers' International Union of North America, Local No. 479. Case 28-CD-195**

January 7, 1982

**DECISION AND ORDER**

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

Upon a charge filed on June 25, 1980, by The Ashton Company, Inc., herein called the Employer, and duly served on United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 741, herein called Respondent or the Plumbers, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 28, issued a complaint on August 6, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(D) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that Respondent violated the Act by picketing the Employer's American Smelting and Refining Company (ASARCO) Mission Mine Unit jobsite from about May to about August 7, 1980, with an object of forcing or requiring the Employer to assign the work of installing all process piping, including water, air, slurry, mill water, reagent, and line slurry piping, at the ASARCO Mission Mine Unit project to employees represented by it rather than to employees represented by Laborers' International Union of North America, Local No. 479, AFL-CIO, herein called the Laborers. The complaint further alleges that Respondent has failed and refused to abide by the Board's July 1, 1981, Decision and Determination of Dispute,<sup>1</sup> which awarded the disputed work to employees represented by the Laborers, by failing and refusing to notify the Regional Director for Region 28, in writing within 10 days, whether it would comply with the award, as required thereby. On August 17, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint and asserting as an affirmative defense that at

all times its picketing was merely for the purpose of seeking compliance with an award issued by the Impartial Jurisdictional Disputes Board of the Building and Construction Trades Council of the AFL-CIO, herein called the IJDB, awarding employees represented by Respondent the disputed work, and that the Board's refusal to apply that award and quash the 10(k) notice of hearing was erroneous as a matter of fact and law.

On September 21, 1981, counsel for the General Counsel filed directly with the Board a motion to transfer and continue the matter before the Board, for summary judgment, and to strike denials in Respondent's answer. The General Counsel submits, in substance, that Respondent is not entitled to a hearing *de novo* on issues which were raised and litigated in the underlying 10(k) proceeding, that Respondent's answer admits that Respondent is failing and refusing to accede to and abide by the Board's Decision and Determination of Dispute in that proceeding, and that Respondent is seeking to relitigate those issues. The General Counsel further submits that the Board should strike Respondent's answer to the extent that it seeks to deny the alleged object of its picketing activities. Subsequently, on September 28, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motions should not be granted. Respondent thereafter filed a response to the Notice To Show Cause and a Motion for Summary Judgment in favor of Respondent and memorandum in support of that motion. In its response, Respondent essentially reiterates its contention that the Board erroneously refused to quash the 10(k) notice of hearing, and urges that the Board should reconsider and overturn the underlying 10(k) award. Respondent further asserts that the General Counsel's motion to strike should be denied, as the parties stipulated that the purpose of the picketing was to protest the Employer's refusal to implement the IJDB award, and therefore its denial of the complaint's allegation that an object of the picketing was to force or require the Employer to assign work to employees represented by it is correct and appropriate.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, including the record in the underlying 10(k) proceeding,<sup>2</sup> the Board makes the following:

<sup>1</sup> *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 741 (The Ashton Company, Inc.)*, 256 NLRB 1022.

<sup>2</sup> The Board's taking official notice of the record in the 10(k) proceeding, and reliance thereon, is well settled. *Local Union No. 3, International*  
*Continued*

### Ruling on the Motions To Strike and for Summary Judgment

Review of the record in this proceeding, and of the record in the underlying 10(k) proceeding, indicates that a hearing was held pursuant to Section 10(k) of the Act, at which all parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. On July 1, 1981, the Board issued its Decision and Determination of Dispute, finding, *inter alia*, the existence of a jurisdictional dispute involving Respondent and the Laborers, that an object of Respondent's picketing was to force or require the Employer to assign the work in dispute to employees represented by Respondent, and that reasonable cause existed to believe that Section 8(b)(4)(D) of the Act had been violated. The Board also found that the result of the proceeding before the IJDB was not controlling, as Respondent had contended.<sup>3</sup> After due consideration of the relevant factors, the Board awarded the disputed work to employees represented by the Laborers, and determined that Respondent was not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the Employer to assign the disputed work to employees represented by it. The Board further ordered Respondent to notify the Regional Director for Region 28, in writing within 10 days from the date of the award, whether it would refrain from engaging in proscribed conduct.

By its denials in its answer to the complaint and by its response to the Notice To Show Cause and Motion for Summary Judgment in favor of Respondent, Respondent seeks to place in issue the Board's finding in the 10(k) proceeding that an object of its picketing was to force or require the Employer to assign the disputed work to employees represented by it. In support of its position, Respondent argues that the sole purpose of the picketing was to obtain compliance with the IJDB decision awarding the work to employees represented by it,<sup>4</sup> and therefore its denial that the picketing was for an object proscribed by Section 8(b)(4)(D) of the Act is not an attempt to relitigate matters previously decided. To picket to force the Employer to comply with an IJDB award assigning employees represented by Respondent the work, how-

ever, is in fact picketing to force the Employer to assign the work to employees represented by Respondent. Thus, we conclude that Respondent is in effect seeking to relitigate issues settled in the 10(k) proceeding. This it cannot do, as it is well settled that issues raised and litigated in a 10(k) proceeding may not be relitigated in a subsequent unfair labor practice proceeding alleging violations of Section 8(b)(4)(D) which are based in part on factual determinations made in the 10(k) proceeding.<sup>5</sup> Accordingly, we grant the General Counsel's motion to strike the denials in Respondent's answer relating to this issue.

We found in the 10(k) proceeding, on the basis of undisputed evidence, that the Plumbers picketed at the Employer's ASARCO Mission Mine jobsite from May 5 until approximately August 7, 1980, with signs stating that the Employer was refusing to comply with the IJDB's work assignment award, that the Plumbers had previously sent a telegram to the Employer demanding that it implement the IJDB award, and that at various times, as a result of the picketing, craft employees of the Employer stopped working and there were interruptions in deliveries to the Employer by third-party suppliers not involved in the dispute. We further found that an object of the Plumbers' picketing was to force or require the Employer to assign the disputed work to employees represented by the Plumbers. On this basis we found reasonable cause to believe that Respondent had violated Section 8(b)(4)(D) of the Act. Since this undisputed evidence is neither supplemented nor controverted in this proceeding, we here find that the preponderance of evidence establishes that Respondent picketed the ASARCO Mission Mine jobsite with an object of forcing or requiring the Employer to assign the work in dispute to employees represented by Respondent, and that by such conduct it violated Section 8(b)(4)(i) and (ii)(D) of the Act.

Respondent's answer admits the allegation that it has failed and refused to accede to and abide by the work assignment and order of the Board by failing and refusing to notify the Regional Director for Region 28, in writing, whether it will refrain from forcing and requiring the Employer, by means proscribed by Section 8(B)(4)(D) of the Act, to assign the work in a manner inconsistent with the Board's determination. Compliance with a 10(k) award requires a good-faith intent by the particular

*Brotherhood of Electrical Workers, AFL-CIO (Mansfield Contracting Corporation)*, 206 NLRB 423 (1973); *International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, Local 433 (Plaza Glass Company)*, 218 NLRB 848 (1975).

<sup>3</sup> The Board specifically found that there was no voluntary method for the adjustment of this dispute, since all parties were not bound to the IJDB procedure.

<sup>4</sup> As noted, the Board found that all parties were not bound to the IJDB procedure.

<sup>5</sup> *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Mansfield Contracting Corporation)*, *supra*; *Bricklayers, Masons and Plasterers International Union of America v. N.L.R.B.*, 475 F.2d 1316 (D.C. Cir. 1973), *enfg. Bricklayers, Stone Masons, Marble Masons, Tile Setters and Terrazzo Workers Local Union No. 1 of Tennessee and Bricklayers, Masons and Plasterers International Union of America (Shelby Marble & Tile Co.)*, 195 NLRB 123 (1972).

respondent to accept and abide thereby, including a timely and unequivocal written statement to the Regional Director indicating such an intent, as is required by the 10(k) award.<sup>6</sup> Respondent has completely failed to notify the Regional Director of its intent to abide, or not to abide, by the 10(k) award, a lack of expression which clearly does not manifest the required good-faith intent to abide by the Board's determination. In these circumstances, having found on the basis of undisputed evidence that Respondent had demanded the disputed work, and that it has not expressed a good-faith intent to abide by the Board's resolution of the dispute in the 10(k) proceeding, we infer that Respondent has not abided thereby and has continued to demand the disputed work. Thus, there being no issues properly litigable in this proceeding, we grant the General Counsel's Motion for Summary Judgment. Respondent's Motion for Summary Judgment in its favor is accordingly denied.

On the basis of the entire record, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE EMPLOYER

The Employer, an Arizona corporation with its principal place of business in Tucson, Arizona, is engaged in business as a construction contractor. During the past year, the Employer purchased goods from directly outside the State of Arizona having a value in excess of \$50,000.

We find, on the basis of the foregoing, that the Employer is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

##### II. THE LABOR ORGANIZATIONS INVOLVED

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 741, and Laborers' International Union of North America, Local No. 479, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

###### A. Background and Facts of the Dispute

At all times material hereto, Respondent and the Laborers have had a jurisdictional dispute concerning the work of installing all process piping, including water, air, slurry, mill water, reagent, and line

slurry piping, at the Employer's ASARCO Mission Mine Unit jobsite in Sahuarita, Arizona. From about May 5 to about August 7, 1980, Respondent picketed the ASARCO Mission Mine Unit jobsite with an object of forcing or requiring the Employer to assign the disputed work to employees represented by it. In so doing, Respondent induced or encouraged employees of Ashton and its suppliers to engage in a strike or a refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services, and has threatened, coerced, and restrained the Employer and other persons engaged in commerce or in industries affecting commerce, with an object of forcing or requiring the Employer to assign the disputed work to employees represented by Respondent, rather than to employees represented by the Laborers.

###### B. The Determination of the Dispute

On July 1, 1981, the Board issued a Decision and Determination of Dispute (256 NLRB 1022) finding that employees represented by the Laborers are entitled to perform the disputed work, and that Respondent was not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the Employer to assign the work to employees represented by it.

###### C. Respondent's Refusal To Comply

By failing and refusing to notify the Regional Director for Region 28, in writing, of its intent to comply with the above-mentioned Decision and Determination of Dispute, Respondent has not complied with the award and has continued to demand the disputed work.

##### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of the Employer described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

##### V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(D)(i) and (ii) of the Act, we shall order that it cease and desist therefrom and take certain af-

<sup>6</sup> *International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, Local 433 (Plaza Glass Company)*, *supra*.

firmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing facts and the entire record, the Board makes the following:

#### CONCLUSIONS OF LAW

1. The Ashton Company, Inc., is an employer engaged in commerce or an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 741, and Laborers' International Union of North America, Local No. 479, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By inducing or encouraging employees of The Ashton Company, Inc., and its suppliers to engage in a strike or a refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services, and by threatening, coercing, and restraining Ashton and other persons engaged in commerce or in industries affecting commerce, with an object of forcing or requiring Ashton to assign the disputed work to employees represented by it, and by failing and refusing to comply with the Board's Decision and Determination of Dispute and continuing to demand the disputed work, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

4. The aforementioned unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 741, Sahuarita, Arizona, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed by The Ashton Company, Inc., or any other person engaged in commerce or an industry affecting commerce, to engage in (1) a strike or refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services, or (2) threatening, coercing, or restraining The Ashton Company, Inc., or any other person engaged in commerce or in an

industry affecting commerce, where, in either case, an object thereof is to force or require The Ashton Company, Inc., to assign the work of installing all process piping, including water, air, slurry, mill water, reagent, and line slurry piping, at Ashton's American Smelting and Refining Company Mission Mine jobsite in Sahuarita, Arizona, to employees represented by it rather than to employees represented by Laborers' International Union of North America, Local No. 479, AFL-CIO.

(b) Refusing to comply with the Board's Decision and Determination of Dispute as set forth at 256 NLRB No. 149.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its business and meeting halls copies of the attached notice marked "Appendix."<sup>7</sup> Copies of said notice, on forms provided by the Regional Director for Region 28, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director for Region 28 signed copies of such notice for posting by the Employer, if willing, in places where notices to employees are customarily posted.

(c) Notify the Regional Director for Region 28, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>7</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

#### NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT induce or encourage individuals employed by The Ashton Company, Inc., or any other person engaged in commerce or an industry affecting commerce, to engage in (1) a strike or refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, arti-

cles, materials, or commodities, or to perform services, or (2) threaten, coerce, or restrain The Ashton Company, Inc., or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require The Ashton Company, Inc., to assign the work of installing all process piping, at Ashton's American Smelting and Refining Company Mission Mine jobsite in Sahuarita, Arizona, to employees represented by us rather than to

employees represented by Laborers' International Union of North America, Local No. 479, AFL-CIO.

WE WILL NOT refuse to comply with the Board's Decision and Determination of Dispute as set forth at 256 NLRB 1022 (1981).

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY, LOCAL UNION No. 741